

MARION BERNICE PHILLIPS

IBLA 85-906

Decided January 29, 1987

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, rejecting oil and gas lease application NM 62122.

Affirmed.

1. Oil and Gas Leases: Applications: Filing -- Oil and Gas Leases:  
Noncompetitive Leases -- Oil and Gas Leases: Rentals

A simultaneous oil and gas lease application is properly rejected when the executed lease forms are not received by the proper BLM office within 30 days from the date applicant receives the lease forms sent for execution.

APPEARANCES: Marion Bernice Phillips, pro se; Margaret C. Miller, Esq., Office of the Solicitor, Southwest Region, U.S. Department of the Interior, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Marion Bernice Phillips has appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated August 7, 1985, rejecting oil and gas lease application NM 62122. The BLM decision stated:

Lease Forms were sent to you by certified return receipt requested mail by this office on June 25, 1985, for Parcel NM 405 (February 1, 1985-Notice of Land Available for Oil and Gas Simultaneous Filings). You received same on July [sic June] 29, 1985, at your address of record shown above. The executed lease forms (offers) were due to be filed in this office by July 29, 1985, pursuant to Title 43 CFR 3112.6-1(a), which states: "The signed lease agreement shall be filed in the proper BLM office within 30 days from the date of receipt of the notice, and shall constitute the applicant's offer to lease."

The signed lease agreement (offer) was filed by you in this office on July 31, 1985. Therefore, your application is hereby rejected as of July 29, 1985 pursuant to Title 43 CFR 3112.5-1(c) which states: "The application of the selected applicant shall

be rejected if an offer is not filed in accordance with subpart 3112.6-1 of this title." See P. A. Rapp, 80 IBLA 133 (April 6, 1984) and Floanne Ervin, 81 IBLA 100 (May 29, 1984).

A refund of the first year's rental in the amount of \$ 796.00 will be initiated at the end of the appeal.

BLM sent lease forms and stipulations to appellant on June 25, 1985. According to the postal return receipt card in the case file, the forms were delivered on June 29, 1985. The signature acknowledging receipt is "Sharon Phillips." Appellant signed lease forms on July 29, 1985, and the forms were filed with BLM on July 31, 1985. Attached to the lease forms is a handwritten note, dated July 29, 1985, and signed by appellant, which states: "I just arrived home from vacation to find my lease. I am sending it 'over-nite express'. I am sorry for the delay - trusting that this will be okay. Thank you kindly."

In her statement of reasons for appeal, appellant objects to the BLM decision which, as worded, appears to require her to file executed forms with BLM on the date of receipt. Appellant states she did not receive the lease forms or sign a certified return receipt to indicate she had.

The BLM response acknowledges that the decision erroneously gave July 29, rather than June 29, 1985, as the date of receipt. BLM continues:

While Appellant [may have] received actual notice of the June 25, 1985 Decision on July 29, 1985, the date she apparently returned from vacation, Appellant had constructive notice of the Decision on June 29, 1985, the date the letter was accepted by her agent. Appellant should be estopped from denying receipt of the notice on June 29, 1985, and should not be allowed to benefit from what appears to be a typographical error in the Agency's August 7, 1985 Decision.

BLM insists appellant was adequately notified. BLM does not find appellant's vacation a justifiable excuse for an attempt to extend the regulatory deadline.

[1] Appellant apparently feels she was not given adequate notice. However, as BLM correctly pointed out, 43 CFR 1810.2(b) deems a person has received a communication once the communication is delivered to the person's last address of record. Therefore, delivery to appellant's address of record constituted notice on the date of delivery.

Appellant had constructive service of the forms on June 29, 1985. Her handwritten note indicates she did not mail the forms until the due date. A vacation cannot serve to extend the deadline. The applicable regulation, 43 CFR 3112.6-1(a), requires that the signed lease agreement be filed within 30 days of the date of receipt of notice. Failure to submit the required documents in a timely manner properly results in the rejection of a simultaneous oil and gas lease application. 43 CFR 3112.5-1(c); see Dawson v. Andrus, 612 F.2d 1280 (10th Cir. 1980); Janet R. Larson, 91 IBLA 151 (1986); Longhorn

Oil, Ltd., 72 IBLA 45 (1983). BLM cannot accept the newly executed lease forms after 30 days from the date of receipt of notice because the rights of other qualified applicants intervened. See Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1974), aff'd, Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1976); see also Kerogen Crushers, 95 IBLA 63, 67 (1986) (Burski, J., concurring).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the New Mexico State Office is affirmed.

R. W. Mullen  
Administrative Judge

We concur:

Wm. Philip Horton  
Chief Administrative Judge

Bruce R. Harris  
Administrative Judge

